

CIVIL SERVICE COMMISSION MINUTES
JANUARY 14, 2009

A special meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

Present were:

W. Dale Bailey
A.Y. Casillas
Barry I. Newman
Francesca Krauel

Absent was:

None

Comprising a quorum of the Commission

Support Staff Present:

Patt Zamary, Executive Officer
Karen F. Landers, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

Approved
Civil Service Commission
February 4, 2009

**SAN DIEGO COUNTY CIVIL SERVICE COMMISSION
SPECIAL MEETING AGENDA
JANUARY 14, 2009**

1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters
and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San
Diego, California

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
4,5,6,7	7	5,6	

COMMENTS: Motion by Newman to approve all items not held for
discussion; seconded by Casillas. Carried.

**CLOSED SESSION AGENDA
County Administration Center, Room 400B
(Notice pursuant to Government Code Sec. 54954.2)
Members of the public may be present at this
location to hear the announcement of the
closed session agenda.**

A. Commissioner Bailey: CONSIDERATION OF PUBLIC
EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) James
Stevens, Esq., on behalf of **Richard Needham**, former
Senior Departmental Personnel Officer, appealing an
Order of Removal and Charges from the County Library
and companion discrimination complaint.

**OPEN SESSION AGENDA
County Administration Center, Room 358**

ELECTIONS

1. Election of President and Vice President of the Civil
Service Commission for 2009.

**Motion by Krauel to nominate A. Y. Casillas for President
and Barry I. Newman for Vice President. Seconded by Bailey.
Carried. The President and Vice President for 2009
appointed.**

MINUTES

2. Approval of the Minutes of the regular meeting of December 17, 2008.

Approved.

CONFIRMATION OF ASSIGNMENT

3. Commissioner Bailey: Karen Paredes, Worksite Organizer, SEIU Local 221, on behalf of **Nancy Bizzarri**, appealing a Final Order of Termination and Charges from the Health and Human Services Agency.

Confirmed.

DISCIPLINE

Findings

4. Commissioner Bailey: James Stevens, Esq., on behalf of **Richard Needham**, former Senior Departmental Personnel Officer, appealing an Order of Removal and Charges from the County Library. (See Item No. 7 below.)

James Stevens, Esq., on behalf of Richard Needham, addressed the Commission. He stated that if the outcome of the Rule VII is not in Mr. Needham's favor, he was requesting that the Rule VI (see No. 7 below) be investigated by OIA.

FINDINGS AND RECOMMENDATIONS:

Employee was a Senior Departmental Personnel Officer in the County Library, which is a part of the Community Services Group of the County. He was removed for incompetence and insubordination, the latter charge referring to personal use of the County computer. Employee appealed the Order of Removal under Civil Service Rule VII. Employee also filed a discrimination complaint with the Civil Service Commission under Civil Service Rule VI, based on a theory of retaliation. The Appointing Authority largely failed to prove the Rule VII charges. In each instance the alleged mistake was (1) not Employee's fault, (2) mitigated or corrected, or (3) not a violation of a clearly stated work rule or deadline. Employee proved that his record of performance was standard to above standard until he was alleged to have complained to the Community Services Group Deputy Chief Administrative Officer about his Appointing Authority. He was even recommended for a performance-based raise and referred to as the "best DPO" in the Community Services Group just prior to that time. After the

Appointing Authority alleged Employee had complained about him, Employee's performance ratings suddenly and severely declined, he was placed on a Performance Improvement Plan (PIP), disciplined, and ultimately removed. The PIP and the Appointing Authority's efforts to rehabilitate Employee were not credible. The charges in the Order of Removal were contrived. Testimony at the hearing supported Employee's version of events. Accordingly, it is hereby recommended that the Order of Removal be reversed; that Employee be awarded back pay, including Quality First payments for FY 06/07, interest, and benefits, from the date of removal to the date of this decision, minus any wages he received from outside employment; that Employee be placed on a transfer list for Senior Departmental Human Resources Officer (formerly Senior Departmental Personnel Officer) with a goal that an appointment be made as soon as possible to a department in another Group; that the Library be ordered to complete a new performance appraisal for the periods covering March 2006 to July 2008, taking into consideration the findings and conclusions listed above; that the June 18, 2008 Letter of Reprimand be sealed in the personnel files at the County Library, DHR and the Community Services Group; that the Library's requested sick leave verification and the Performance Improvement Plan be revoked; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Bailey to approve Findings and
Recommendations; seconded by Krauel; discussion:**

Commissioner Newman: "I plan to vote against the Motion and I'd like to explain why. There is, in my mind, a disconnect, and an important disconnect, between the fact that the Motion implies that the acts that were complained about, some of which were mitigated or corrected, did not rise to the dignity level of justifying termination or maybe even discipline. And I'm not objecting to that part of the Finding. What I'm objecting to is the fact that although they do not rise to that level, they did occur. They did require correction; they did require mitigation. And in light of that fact I believe that it is critical for future supervisors of this individual, or for the record, to be aware of that fact. And therefore because this Motion requires that the appraisal and the performance evaluations and all the actions be either sealed or redone, I cannot accept the Motion, and therefore, Mr. Chairman, I will be voting against it."

Call for the vote:

AYES:	Bailey, Casillas, Krauel
NOES:	Newman
ABSTENTIONS:	None
ABSENT:	None

Motion carried.

DISCRIMINATION

Complaints

5. **Lynda Coburn**, Office Assistant, alleging discrimination by the Health and Human Services Agency.

RECOMMENDATION: Assign Commissioner Krauel as Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Lynda Coburn asked whether she could present her case and explain her Rule VI complaint. Commissioner Bailey explained that by this recommendation, staff will forward her Rule VI Complaint on to OIA for investigation and report back. Therefore, her presentation was not appropriate at this time.

Motion by Newman to accept staff recommendation; seconded by Casillas. Carried. Commissioner Krauel assigned.

6. Stephen McLaughlin, Sr., J.D., on behalf of **Deborah J. McLaughlin**, Land Use Technician I, alleging discrimination by the Department of Planning and Land Use and requesting the issuance of a temporary order by the Commission.

RECOMMENDATION: Assign Commissioner Newman as Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back. Deny request for the issuance of a temporary order.

Stephen McLaughlin, Sr., J.D., represented Deborah McLaughlin with regard to this matter, specifically for issuance of a temporary restraining order. Mr. McLaughlin stated that the alleged situation between the Department and Ms. McLaughlin is ongoing and requests either that her supervisor be transferred, or that Ms. McLaughlin be transferred during the Rule VI investigation process.

Commissioner Newman asked whether Mr. McLaughlin had submitted specific language. Mr. McLaughlin explained that the request for a temporary restraining order was abstract, but that he would be willing to submit specific language for the Commission's review.

Dennis Floyd, Sr. Deputy County Counsel, representing the Department, objected to the issuance of a temporary restraining order. Mr. Floyd stated that there has been neither an investigation or hearing to prove any of the allegations, and therefore it is inappropriate for the Commission at this point to issue a temporary restraining order.

Motion by Krauel to accept staff recommendation. Commissioner Krauel stated that she agreed with Mr. Floyd's analysis that it is premature to make any ruling at this time. However, she further stated that the Department is on notice that an investigation will be made, and that should there be any truth to Ms. McLaughlin's allegations, all improper treatment will cease. Commissioner Krauel strongly stated that she is in no way accusing the Department of any of the actions alleged by Ms. McLaughlin.

Seconded by Casillas. Carried. Commissioner Newman assigned.

Findings

7. Commissioner Bailey: James Stevens, Esq., on behalf of **Richard Needham**, former Senior Departmental Personnel Officer, alleging discrimination by the County Library. (See Item No. 4 above.)

Commissioner Bailey explained to Mr. Stevens, on behalf of Richard Needham, that the Rule VI discrimination complaint will be forwarded on to the Office of Internal Affairs (OIA) for investigation.

Commissioner Newman asked for a point of clarification. In Item No. 4 above, Mr. Stevens had expressed that if the Rule VII Findings did not go in favor of his client, Mr. Needham wanted to pursue the Rule VI discrimination complaint. Commissioner Newman asked Mr. Stevens if this was still the case, since the Rule VII did in fact go in Mr. Needham's favor, and therefore, would Mr. Needham be withdrawing his Rule VI complaint.

Mr. Stevens responded that he and Mr. Needham were not in a position to make a decision on the withdrawal of the Rule VI at this time and would like an opportunity to fully review the written Rule VII findings and recommendations above (Item No. 4).

Motion by Krauel to continue this matter until either 1) Mr. Needham submits a withdrawal of his Rule VI complaint; or 2) OIA presents its report.

Commissioner Newman offered a friendly amendment to Commissioner Krauel's motion and asked that this matter be continued to the Commission's next meeting (February 4, 2009) in order to allow Mr. Needham and his counsel ample time to review the Rule VII Findings. (This friendly amendment stays OIA's investigation until that time.)

Friendly amendment accepted by Commissioner Krauel. Motion seconded by Newman. Carried.

Item No. 7 continued.

OTHER MATTERS

Ratification of Medical Provider

8. Ratification of **Christopher Gualtieri, M.D.**, as an additional name to the list of medical providers to be used for fitness for duty examinations at the request of the Department of Human Resources.

RECOMMENDATION: Ratify.

Item No. 8 ratified.

Extension of Temporary Appointments

9. Health and Human Services Agency

1 Residential Care Worker II (Roberta Tingzon)

RECOMMENDATION: Ratify.

Item No. 9 ratified.

10. Public Input.

ADJOURNED: 3:02 p.m.

NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION:

FEBRUARY 4, 2009

ASSISTANCE FOR THE DISABLED:

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